



8011-01
SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-88887; File No. SR-CboeBZX-2019-107]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to Adopt Rule 14.11(m), Tracking Fund Shares, and to List and Trade Shares of the Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF
May 15, 2020.

I. Introduction

On December 12, 2019, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt BZX Rule 14.11(m) and to list and trade shares (“Shares”) of the Fidelity Value ETF, Fidelity Growth ETF, and Fidelity Opportunistic ETF (each a “Fund,” and, collectively, “Funds”), each a series of the Fidelity Covington Trust (“Trust”), under proposed BZX Rule 14.11(m). The proposed rule change was published for comment in the Federal Register on December 31, 2019.³

On February 12, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.⁴ On

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 87856 (December 23, 2019), 84 FR 72414.

⁴ Amendment No. 1 is available on the Commission’s website at <https://www.sec.gov/comments/sr-cboebzx-2019-107/srcboebzx2019107-6984660-214616.pdf>.

February 13, 2020, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁶ On March 26, 2020, the Commission published Amendment No. 1 for notice and comment and instituted proceedings under Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change.⁸ On April 7, 2020, the Exchange filed Amendment No. 3, which replaced and superseded the proposed rule change, as amended by Amendment No. 1.⁹ On May 12, 2020, the Exchange filed Amendment No. 4 to the proposed rule change, which replaced and superseded the proposed rule change as amended by Amendment No. 3.¹⁰ On May 14, 2020, the Exchange filed Amendment No. 5 to the proposed rule change, which replaced and superseded the proposed rule change as amended by Amendment No. 4.¹¹ The Commission has received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 5, from

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 88195, 85 FR 9888 (February 20, 2020). The Commission designated March 30, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Securities Exchange Act Release No. 88481, 85 FR 18304 (April 1, 2020).

⁹ Amendment No. 3 is available on the Commission's website at <https://www.sec.gov/comments/sr-cboebzx-2019-107/srcboebzx2019107-7055624-215408.pdf>. The Exchange filed and withdrew Amendment No. 2 on April 7, 2020.

¹⁰ Amendment No. 4 is available on the Commission's website at <https://www.sec.gov/comments/sr-cboebzx-2019-107/srcboebzx2019107-7180931-216798.pdf>.

¹¹ Amendment No. 5 is available on the Commission's website at <https://www.sec.gov/comments/sr-cboebzx-2019-107/srcboebzx2019107-7196701-216862.pdf>.

interested persons and is approving the proposed rule change, as modified by Amendment No. 5, on an accelerated basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, as Modified by Amendment No. 5

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This Amendment No. 5 to SR-CboeBZX-2019-107 amends and replaces in its entirety the proposal as amended by Amendment No. 4, which was submitted on May 12, 2020, which amended and replaced in its entirety Amendment No. 3, which was submitted on April 7, 2020, and amended and replaced in its entirety Amendment No. 1, which was submitted on February 12, 2020, and amended and replaced in its entirety the proposal as originally submitted on December 12, 2019.¹² The Exchange submits this Amendment No. 5 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to add new Rule 14.11(m) for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges, of Tracking Fund Shares,

¹² The Exchange notes that it submitted and subsequently withdrew Amendment No. 2 on April 7, 2020.

which are securities issued by an actively managed open-end management investment company.¹³

Proposed Rule 14.11(m)

Proposed Rule 14.11(m)(3)(A) provides that the term “Tracking Fund Share” means a security that: (i) represents an interest in an investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a

¹³ The basis of this proposal are several applications for exemptive relief that were filed with the Commission and for which public notice was issued on November 14, 2019 and subsequent order granting certain exemptive relief to, among others, Fidelity Management & Research Company and FMR Co., Inc., Fidelity Beach Street Trust, and Fidelity Distributors Corporation (File No. 812-14364), issued on December 10, 2019 (the “Application,” “Notice,” and “Order,” respectively, and, collectively, the “Exemptive Order”). See Investment Company Act Release Nos. 33683 (November 14, 2019), 84 FR 64140 (November 20, 2019) (the Notice) and 33712 (the Order). The Order specifically notes that “granting the requested exemptions is appropriate in and consistent with the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. It is further found that the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transactions are consistent with the policy of each registered investment company concerned and with the general purposes of the Act.” The Exchange notes that it also referred to the application for exemptive relief orders (collectively, with the Application, the “Proxy Applications”) and notices thereof (collectively, with the Notice, the “Proxy Notices”) for T. Rowe Price Associates, Inc. and T. Rowe Price Equity Series, Inc. (File No. 812-14214 and Investment Company Act Release Nos. 33685 and 33713), Natixis ETF Trust II, et al. (File No. 812-14870 and Investment Company Act Release Nos. 33684 and 33711), Blue Tractor ETF Trust and Blue Tractor Group, LLC (File No. 812-14625 and Investment Company Act Release Nos. 33682 and 33710), and Gabelli ETFs Trust, et al. (File No. 812-15036 and Investment Company Act Release Nos. 33681 and 33708). While there are certain differences between the applications, the Exchange believes that each would qualify as Tracking Fund Shares under proposed Rule 14.11(m).

specified Tracking Basket and/or a cash amount with a value equal to the next determined Net Asset Value (“NAV”); (iii) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified Tracking Basket and/or a cash amount with a value equal to the next determined NAV; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

Proposed Rule 14.11(m)(1) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Tracking Fund Shares that meet the criteria of this Rule.

Proposed Rule 14.11(m)(2) provides that this proposed Rule is applicable only to Tracking Fund Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Tracking Fund Shares are included within the definition of “security” or “securities” as such terms are used in the Rules of the Exchange.

Proposed Rule 14.11(m)(2)(A)-(C) provide that the Exchange will file separate proposals under Section 19(b) of the Act before the listing of Tracking Fund Shares; and that transactions in Tracking Fund Shares will occur throughout the Exchange’s trading hours; the minimum price variation for quoting and entry of orders in Tracking Fund Shares is \$0.01.

Proposed Rule 14.11(m)(2)(D) provides that the Exchange will implement and maintain written surveillance procedures for Tracking Fund Shares and as part of these surveillance procedures, the Investment Company’s investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Fund Portfolio of each series of Tracking Fund Shares.

Proposed Rule 14.11(m)(2)(E) provides that if the investment adviser to the Investment Company issuing Tracking Fund Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio and/or the Tracking Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Fund Portfolio and/or the Tracking Basket or has access to nonpublic information regarding the Fund Portfolio and/or the Tracking Basket or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio and/or the Tracking Basket or changes thereto.

Proposed Rule 14.11(m)(2)(F) provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Tracking Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Tracking Basket or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Tracking Basket.

Proposed Rule 14.11(m)(3)(B) provides that the term “Fund Portfolio” means the identities and quantities of the securities and other assets held by the Investment Company that

will form the basis for the Investment Company's calculation of NAV at the end of the business day.

Proposed Rule 14.11(m)(3)(C) provides that the term "Reporting Authority" in respect of a particular series of Tracking Fund Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Tracking Fund Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Tracking Basket; the Fund Portfolio; the amount of any cash distribution to holders of Tracking Fund Shares, NAV, or other information relating to the issuance, redemption or trading of Tracking Fund Shares. A series of Tracking Fund Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 14.11(m)(3)(D) provides that the term "Normal Market Conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

Proposed Rule 14.11(m)(3)(E) provides that the term "Tracking Basket" means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the 1940 Act applicable to a series of Tracking Fund Shares. The website for each series of Tracking Fund Shares shall disclose the following information regarding the Tracking Basket as required under this Rule 14.11(m), to the extent applicable: (i) Ticker symbol; (ii) CUSIP or

other identifier; (iii) Description of holding; (iv) Quantity of each security or other asset held; and (v) Percentage weight of the holding in the portfolio

Proposed Rule 14.11(m)(4)(A) provides the initial listing criteria for a series of Tracking Fund Shares, which include the following: (A) each series of Tracking Fund Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria: (i) for each series, the Exchange will establish a minimum number of Tracking Fund Shares required to be outstanding at the time of commencement of trading on the Exchange; (ii) the Exchange will obtain a representation from the issuer of each series of Tracking Fund Shares that the NAV per share for the series will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: the NAV, the Tracking Basket, and the Fund Portfolio; and (iii) all Tracking Fund Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.

Proposed Rule 14.11(m)(4)(B) provides that each series of Tracking Fund Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria: (i) the Tracking Basket will be publicly disseminated at least once daily and will be made available to all market participants at the same time; and (ii) the Fund Portfolio will at a minimum be publicly disclosed within at least 60 days following the end of every fiscal quarter and will be made available to all market participants at the same time; (iii) upon termination of an Investment Company, the Exchange requires that Tracking Fund Shares issued in connection with such entity be removed from listing on the Exchange; and (iv) voting rights shall be as set forth in the applicable Investment Company prospectus or Statement of Additional Information.

Additionally, proposed Rule 14.11(m)(4)(B)(iii) provides that the Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Tracking

Fund Shares pursuant to Rule 14.12 under any of the following circumstances: (a) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Tracking Fund Shares, there are fewer than 50 beneficial holders of the series of Tracking Fund Shares for 30 or more consecutive trading days; (b) if either the Tracking Basket or Fund Portfolio is not made available to all market participants at the same time; (c) if the Investment Company issuing the Tracking Fund Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission or the Commission Staff under the 1940 Act to the Investment Company with respect to the series of Tracking Fund Shares; (d) if any of the requirements set forth in this rule are not continuously maintained; (e) if any of the applicable Continued Listing Representations for the issue of Tracking Fund Shares are not continuously met; or (f) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 14.11(m)(4)(B)(iv) provides that (a) the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Tracking Fund Shares inadvisable. These may include: (i) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Tracking Basket or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; and (b) if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: the net asset value, the Tracking Basket, or the Fund Portfolio with respect to a series of Tracking Fund Shares, then the Exchange will halt trading in such series

until such time as the net asset value, the Tracking Basket, or the Fund Portfolio is available to all market participants, as applicable.

Proposed Rule 14.11(m)(5) provides that neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Tracking Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Tracking Fund Shares; NAV; or other information relating to the purchase, redemption, or trading of Tracking Fund Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Policy Discussion – Proposed Rule 14.11(m)

The purpose of the structure of Tracking Fund Shares is to provide investors with the traditional benefits of ETFs¹⁴ while protecting funds from the potential for front running or free

¹⁴ For purposes of this filing, the term ETF will include only Portfolio Depositary Receipts as defined in Rule 14.11(b), Index Fund Shares as defined in Rule 14.11(c), Managed

riding of portfolio transactions, which could adversely impact the performance of a fund. While each series of Tracking Fund Shares will be actively managed and, to that extent, similar to Managed Fund Shares (as defined in Rule 14.11(i)), Tracking Fund Shares differ from Managed Fund Shares in one key way.¹⁵ A series of Tracking Fund Shares will disclose the Tracking Basket on a daily basis which, as described above, is designed to closely track the performance of the holdings of the Investment Company, instead of the actual holdings of the Investment Company, as provided by a series of Managed Fund Shares.¹⁶

For the arbitrage mechanism for any ETF to function effectively, authorized participants, arbitrageurs, and other market participants (collectively, “Market Makers”) need sufficient information to accurately value shares of a fund to transact in both the primary and secondary

Fund Shares as defined in Rule 14.11(i), and ETF Shares as defined in Rule 14.11(l), along with the equivalent products defined in the rules of other national securities exchanges.

¹⁵ The Exchange notes that there is one additional substantive difference between proposed Rule 14.11(m) and Rule 14.11(i): proposed Rule 14.11(m) would require a rule filing under Section 19(b) prior to listing any product on the Exchange meaning that no series of Tracking Fund Shares could be listed on the Exchange pursuant to Rule 19b-4(e) and there are no proposed rules comparable to the quantitative portfolio holdings standards from Rule 14.11(i).

¹⁶ Proposed Rule 14.11(m)(4)(B)(iii) will, however, require each series of Tracking Fund Shares to at a minimum disclose the entirety of its portfolio holdings within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.

Form N-PORT requires reporting of a fund’s complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund’s Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund’s SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission’s website at www.sec.gov.

market. The Tracking Basket is designed to closely track the daily performance of the Fund Portfolio.

Given the correlation between the Tracking Basket and the Fund Portfolio,¹⁷ the Exchange believes that the Tracking Basket would serve as a pricing signal to identify arbitrage opportunities when its value and the secondary market price of the shares of a series of Tracking Fund Shares diverge. If shares began trading at a discount to the Tracking Basket, an authorized participant could purchase the shares in secondary market transactions and, after accumulating enough shares to comprise a creation unit,¹⁸ redeem them in exchange for a redemption basket reflecting the NAV per share of the Fund Portfolio. The purchases of shares would reduce the supply of shares in the market, and thus tend to drive up the shares' market price closer to the fund's NAV. Alternatively, if shares are trading at a premium, the transactions in the arbitrage process are reversed. Market Makers also can engage in arbitrage without using the creation or redemption processes. For example, if a fund is trading at a premium to the Tracking Basket, Market Makers may sell shares short and take a long position in the Tracking Basket securities, wait for the trading prices to move toward parity, and then close out the positions in both the

¹⁷ As provided in the Proxy Notices, funds and their respective advisers will take remedial actions as necessary if the funds do not function as anticipated. For the first three years after a launch, a fund will establish certain thresholds for its level of tracking error, premiums/discounts, and spreads, so that, upon the fund's crossing a threshold, the adviser will promptly call a meeting of the fund's board of directors and will present the board or committee with recommendations for appropriate remedial measures. The board would then consider the continuing viability of the fund, whether shareholders are being harmed, and what, if any, action would be appropriate. Specifically, the Proxy Applications and Proxy Notices provide that such a meeting would occur: (1) if the tracking error exceeds 1%; or (2) if, for 30 or more days in any quarter or 15 days in a row (a) the absolute difference between either the market closing price or bid/ask price, on one hand, and NAV, on the other, exceeds 2%, or (b) the bid/ask spread exceeds 2%.

¹⁸ Tracking Fund Shares will be purchased or redeemed only in large aggregations, or "creation units," and the Tracking Basket will constitute the names and quantities of instruments for both purchases and redemptions of Creation Units.

shares and the securities, to realize a profit from the relative movement of their trading prices. Similarly, a Market Maker could buy shares and take a short position in the Tracking Basket securities in an attempt to profit when shares are trading at a discount to the Tracking Basket.

Overall, the Exchange believes that the arbitrage process would operate similarly to the arbitrage process in place today for existing ETFs that use in-kind baskets for creations and redemptions that do not reflect the ETF's complete holdings but nonetheless produce performance that is highly correlated to the performance of the ETF's actual portfolio. The Exchange has observed highly efficient trading of ETFs that invest in markets where security values are not fully known at the time of ETF trading, and where a perfect hedge is not possible, such as international equity and fixed-income ETFs. While the ability to value and hedge many of these existing ETFs in the market may be limited, such ETFs have generally maintained an effective arbitrage mechanism and traded efficiently.

As provided in the Notice, the Commission believes that an arbitrage mechanism based largely on the combination of a daily disclosed Tracking Basket and at a minimum quarterly disclosure of the Fund Portfolio can work in an efficient manner to maintain a fund's secondary market prices close to its NAV.¹⁹ Consistent with the Commission's view, the Exchange believes that the arbitrage mechanism for Tracking Fund Shares will be sufficient to keep secondary market prices in line with NAV.

The Exchange notes that a significant amount of information about each fund and its Fund Portfolio will be publicly available at all times. Each series will disclose the Tracking

¹⁹ See Notice at 64144. The Commission also notes that as long as arbitrage continues to keep the Fund's secondary market price and NAV close, and does so efficiently so that spreads remain narrow, that investors would benefit from the opportunity to invest in active strategies through a vehicle that offers the traditional benefits of ETFs. See *Id.*, at 64145.

Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis. Each series of Tracking Fund Shares will at a minimum publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per share basis for each fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Tracking Basket compared to the Fund Holdings for the prior business day and any information regarding the bid/ask spread for each fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended. The website and information will be publicly available at no charge.

While not providing daily disclosure of the Fund Portfolio could open the door to potential information leakage and misuse of material non-public information, the Exchange believes that proposed Rules 14.11(m)(2)(E) and (F) provide sufficient safeguards to prevent such leakage and misuse of information. The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Tracking Fund Shares because they provide meaningful requirements about both the data that will be made publicly available about the Shares as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to information protection enumerated under

proposed Rule 14.11(m)(2)(F) will act as a strong safeguard against any misuse and improper dissemination of information related to a Fund Portfolio, the Tracking Basket, or changes thereto. The requirement that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Tracking Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Tracking Basket or changes thereto will act to prevent any individual or entity from sharing such information externally. Additionally, the requirement that any such person or entity that is registered as a broker-dealer or affiliated with a broker-dealer will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Tracking Basket will act to make sure that no entity will be able to misuse the data for their own purposes. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Tracking Fund Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Tracking Fund Shares through the Exchange will be subject to the Exchange’s surveillance procedures for derivative products. The Exchange will require the issuer of each series of Tracking Fund Shares listed on the Exchange to represent to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil

for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

As noted in proposed Rule 14.11(m)(2)(D), the Investment Company's investment adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily Fund Portfolio of each series of Tracking Fund Shares. The Exchange believes that this is appropriate because it will provide the Exchange or FINRA, on behalf of the Exchange, with access to the daily Fund Portfolio of any series of Tracking Fund Shares upon request on an as needed basis. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Tracking Fund Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the shares.

Trading Halts

As described above, proposed Rule 14.11(m)(4)(B)(iv) provides that (a) the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Tracking Fund Shares inadvisable. These may include: (i) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Tracking Basket or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; and (b) if the Exchange becomes aware that one of the following is not being made

available to all market participants at the same time: the net asset value, the Tracking Basket, or the Fund Portfolio with respect to a series of Tracking Fund Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Tracking Basket, or the Fund Portfolio is available to all market participants, as applicable.

Availability of Information

As noted above, Form N-PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov. The Exchange also notes that the Proxy Applications provide that an issuer will comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information, which otherwise do not apply to issuers of Tracking Fund Shares.

Information regarding market price and trading volume of the shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the shares will be published daily in the financial section of newspapers. Quotation and last sale information for the shares will be available via the Consolidated Tape Association ("CTA") high-speed line.

Trading Rules

The Exchange deems Tracking Fund Shares to be equity securities, thus rendering trading in the shares subject to the Exchange's existing rules governing the trading of equity securities.²⁰ As provided in proposed Rule 14.11(m)(2)(C), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01. The Exchange has appropriate rules to facilitate trading in Tracking Fund Shares during all trading sessions.

Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF

The Shares are offered by the Trust, which is organized as a business trust under the laws of The Commonwealth of Massachusetts. The Trust is registered with the Commission as an open-end investment company and will file a registration statement on behalf of the Funds on Form N-1A ("Registration Statement") with the Commission.²¹ Fidelity Management & Research Company or FMR Co., Inc. (the "Adviser") will be the investment adviser to the Funds. The Adviser is not registered as a broker-dealer, but is affiliated with numerous broker-dealers. The Adviser represents that a fire wall exists and will be maintained between the respective personnel at the Adviser and affiliated broker-dealers with respect to access to information concerning the composition and/or changes to each Fund's portfolio and Tracking Basket. Personnel who make decisions on a Fund's portfolio composition and/or Tracking Basket or who have access to nonpublic information regarding the Fund Portfolio and/or the

²⁰ With respect to trading in Tracking Fund Shares, all of the BZX Member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange will continue to monitor its Members for compliance with such requirements.

²¹ The Trust intends to file a post-effective amendment to the Registration Statement in the near future. The descriptions of the Funds and the Shares contained herein are based, in part, on information that will be included in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a-1).

Tracking Basket or changes thereto are subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio and/or Tracking Basket. The Funds' sub-advisers, FMR Investment Management (UK) Limited, Fidelity Management & Research (Hong Kong) Limited, and Fidelity Management & Research (Japan) Limited (each a "Sub-Adviser" and, collectively, the "Sub-Advisers"), are not registered as a broker-dealer but are affiliated with numerous broker-dealers. Sub-Adviser personnel who make decisions regarding a Fund's Fund Portfolio and/or Tracking Basket or who have access to information regarding the Fund Portfolio and/or the Tracking Basket or changes thereto are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio and/or Tracking Basket. In the event that (a) the Adviser or a Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer; or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes newly affiliated with a broker-dealer; it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the Fund Portfolio and/or Tracking Basket, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio and/or Tracking Basket. Any person or entity, including any service provider for the Funds, who has access to nonpublic information regarding a Fund Portfolio or Tracking Basket or changes thereto for a Fund or Funds will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or Tracking Basket or changes thereto. Further, any such person or entity that is registered as a broker-dealer or affiliated with a broker-dealer, has erected and will maintain a "fire wall" between the person or entity and the broker-

dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Tracking Basket. Each Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Shares will conform to the initial and continued listing criteria under Rule 14.11(m) as well as all terms in the Exemptive Order. The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A-3 under the Act.²² A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of each Fund that the NAV per share of each Fund will be calculated daily and will be made available to all market participants at the same time. Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

Fidelity Blue Chip Value ETF

The Fund's holdings will conform to the permissible investments as set forth in the Application and Order and the holdings will be consistent with all requirements in the Application and Order.²³ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group ("ISG") or with which the Exchange has in place a comprehensive surveillance sharing agreement.

²² See 17 CFR 240.10A-3.

²³ Pursuant to the Order, the Fund's permissible investments include only the following instruments: ETFs, exchange-traded notes, exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares ("foreign common stocks"), exchange-traded preferred stocks, exchange-traded American Depositary Receipts ("ADRs"), exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents. With the exception of foreign common stocks and cash and cash equivalents, all holdings of the Fund will be listed on a U.S. national securities exchange.

The Fund seeks long-term growth of capital as its investment objective. In order to achieve its investment objective, the Fund typically invests primarily in: (i) in blue chip companies (companies that, in the Adviser’s view, are well-known, well-established and well-capitalized), which generally have large or medium market capitalizations; and (ii) companies that the Adviser believes are undervalued in the marketplace in relation to factors such as assets, sales, earnings, growth potential, or cash flow, or in relation to securities of other companies in the same industry (stocks of these companies are often called “value” stocks).

Fidelity Blue Chip Growth ETF

The Fund’s holdings will conform to the permissible investments as set forth in the Application and Order and the holdings will be consistent with all requirements in the Application and Order.²⁴ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Fund seeks long-term growth of capital as its investment objective. In order to achieve its investment objective, the Fund typically invests primarily in: (i) in blue chip companies (companies that, in the Adviser’s view, are well-known, well-established and well-capitalized), which generally have large or medium market capitalizations; and (ii) companies

²⁴ Pursuant to the Order, the Fund’s permissible investments include only the following instruments: ETFs, exchange-traded notes, exchange-traded common stocks, foreign common stocks, exchange-traded preferred stocks, ADRs, exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents. With the exception of foreign common stocks and cash and cash equivalents, all holdings of the Fund will be listed on a U.S. national securities exchange.

that the Adviser believes have above-average growth potential (stocks of these companies are often called “growth” stocks).

Fidelity New Millennium ETF

The Fund’s holdings will conform to the permissible investments as set forth in the Application and Order and the holdings will be consistent with all requirements in the Application and Order.²⁵ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Fund seeks long-term growth of capital as its investment objective. In order to achieve its investment objective, the Fund typically invests primarily in: (i) companies that may benefit from opportunities created by long-term changes in the marketplace by examining technological advances, product innovation, economic plans, demographics, social attitudes, and other factors, which can lead to investments in small and medium-sized companies; and (ii) both “growth” and “value” stocks based on fundamental analysis of factors such as each issuer’s financial condition and industry position, as well as market and economic conditions.

Tracking Basket for the Proposed Funds

For the Funds, the Tracking Basket will consist of a combination of the Fund’s recently disclosed portfolio holdings and representative ETFs. ETFs selected for inclusion in the Tracking

²⁵ Pursuant to the Order, the Fund’s permissible investments include only the following instruments: ETFs, exchange-traded notes, exchange-traded common stocks, foreign common stocks, exchange-traded preferred stocks, ADRs, exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents. With the exception of foreign common stocks and cash and cash equivalents, all holdings of the Fund will be listed on a U.S. national securities exchange.

Basket will be consistent with the Fund's objective and selected based on certain criteria, including, but not limited to, liquidity, assets under management, holding limits and compliance considerations. Representative ETFs can provide a useful mechanism to reflect a Fund's holdings' exposures within the Tracking Basket without revealing a Fund's exact positions.²⁶ Intraday pricing information for all constituents of the Tracking Basket that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services. The Exchange notes that each Fund's NAV will form the basis for creations and redemptions for the Funds and creations and redemptions will work in a manner substantively identical to that of series of Managed Fund Shares. The Adviser expects that the Shares of the Funds will generally be created and redeemed in-kind, with limited exceptions. The names and quantities of the instruments that constitute the basket of securities for creations and redemptions will be the same as a Fund's Tracking Basket, except to the extent purchases and redemptions are made entirely or in part on a cash basis. In the event that the value of the Tracking Basket is not the same as a Fund's NAV, the creation and redemption baskets will consist of the securities included in the Tracking Basket plus or minus an amount of cash equal to the difference between the NAV and the value of the Tracking Basket, as further described below.

²⁶ The set of ETFs that are "representative" to be used in the Tracking Basket will depend on certain factors, including the Fund's investment objective, past holdings, and benchmark, and may change from time to time. For example, a U.S. diversified fund benchmarked to a diversified U.S. index would use liquid U.S. exchange-traded ETFs to capture size (large, mid or small capitalization), style (growth or value) and/or sector exposures in the Fund's portfolio. Leveraged and inverse ETFs will not be included in the Tracking Basket. ETFs may constitute no more than 50% of the Tracking Basket's assets.

The Tracking Basket will be constructed utilizing a covariance matrix based on an optimization process to minimize deviations in the return of the Tracking Basket relative to the Fund. The proprietary optimization process mathematically seeks to minimize three key parameters that the Adviser believes are important to the effectiveness of the Tracking Basket as a hedge: tracking error (standard deviation of return differentials between the Tracking Basket and the Fund), turnover cost, and basket creation cost.²⁷ Typically, the Tracking Basket is expected to be rebalanced on schedule with the public disclosure of the Fund's holdings; however, a new optimized Tracking Basket may be generated as frequently as daily, and therefore, rebalancing may occur more frequently at the Adviser's discretion. In determining whether to rebalance a new optimized Tracking Basket, the Adviser will consider various factors, including liquidity of the securities in the Tracking Basket, tracking error, and the cost to create and trade the Tracking Basket.²⁸ For example, if the Adviser determines that a new Tracking Basket would reduce the variability of return differentials between the Tracking Basket and the Fund when balanced against the cost to trade the new Tracking Basket, rebalancing may be appropriate. The Adviser will periodically review the Tracking Basket parameters and Tracking Basket performance and process.

²⁷ Tracking error measures the deviations between the Tracking Basket and Fund. Turnover cost and basket creation cost are measures of the cost to create and maintain the Tracking Basket as a hedge.

²⁸ The Adviser uses a trading cost model to develop estimates of costs to trade a new Tracking Basket. There are essentially two elements to this cost: (1) the cost to purchase securities constituting the Tracking Basket, i.e., the cost to put on the hedge for the Authorized Participant, and (2) the cost of any adjustments that need to be made to the composition of the Tracking Basket, i.e., the cost to the Authorized Participant to change or maintain the hedge position. The inclusion of the trading cost model in the optimization process is intended to result in a Tracking Basket that is cost effective and liquid without compromising its tracking ability.

As noted above, each Fund will also disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio, at a minimum within at least 60 days following the end of every fiscal quarter. As described above, the Exchange notes that the concept of the Tracking Basket employed under this structure is designed to provide investors with the traditional benefits of ETFs while protecting the Funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of a Fund.

Policy Discussion – Proposed Funds

Separately and in addition to the rationale supporting the arbitrage mechanism for Tracking Fund Shares more broadly above, the Exchange also believes that the particular instruments that may be included in each Fund Portfolio and Tracking Basket do not raise any concerns related to the Tracking Baskets being able to closely track the NAV of the Funds because such instruments include only instruments that trade on an exchange contemporaneously with the Shares.²⁹ The Funds will also comply with the initial and continued listing requirements under Proposed Rule 14.11(m) applicable to Tracking Fund Shares. In addition, a Fund's Tracking Basket will be optimized so that it reliably and consistently correlates to the performance of the Fund. The Exchange and the Adviser agree with language in the Notice that specifically states that “in order to facilitate arbitrage, each Fund's portfolio and Tracking Basket will only include certain securities that trade on an exchange contemporaneously with the Fund's Shares. Because the securities would be exchange traded, market participants would be able to

²⁹ The Exchange notes that to the extent that the Fund Portfolio or Tracking Basket include any foreign common stocks, such securities will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

accurately price and readily trade the securities in the Tracking Basket for purposes of assessing the intraday value of the Fund's portfolio holdings and to hedge their positions in the Fund's Shares."³⁰

The Adviser anticipates that the returns between a Fund and its respective Tracking Basket will have a consistent relationship and that the deviation in the returns between a Fund and its Tracking Basket will be sufficiently small such that the Tracking Basket will provide Market Makers with a reliable hedging vehicle that they can use to effectuate low-risk arbitrage trades in Fund Shares. The Exchange believes that the disclosures provided by the Funds will allow Market Makers to understand the relationship between the performance of a Fund and its Tracking Basket. Market Makers will be able to estimate the value of and hedge positions in a Fund's Shares, which the Exchange believes will facilitate the arbitrage process and help ensure that the Fund's Shares normally will trade at market prices close to their NAV. The Exchange also believes that competitive market making, where traders are looking to take advantage of differences in bid-ask spread, will aid in keeping spreads tight.

The Exchange notes that a significant amount of information about each Fund and its Fund Portfolio is publicly available at all times. Each series will disclose the Tracking Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis.

³⁰ The Exchange notes that the instruments enumerated herein are consistent with the investable universe contemplated in the Notice. Specifically, the Notice provides that "Each Fund may invest only in ETFs, Exchange-traded notes, Exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares, Exchange-traded preferred stocks, Exchange-traded American depositary receipts, Exchange-traded real estate investment trusts, Exchange-traded commodity pools, Exchange-traded metals trusts, Exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents. All futures contracts that a Fund may invest in will be traded on a U.S. futures exchange. For these purposes, an "Exchange" is a national securities exchange as defined in section 2(a)(26) of the [1940] Act." See Notice at 64143.

Each series of Tracking Fund Shares will at a minimum publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Tracking Basket compared to the Fund Holdings for the prior business day and any information regarding the bid/ask spread for each Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended.

Additional Information

The Exchange represents that the Shares of the Funds will continue to comply with all other proposed requirements applicable to Tracking Fund Shares, including the dissemination of key information such as the Tracking Basket, the Fund Portfolio, and NAV, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, an information circular informing members of the special characteristics and risks associated with trading in the series of Tracking Fund Shares, and firewalls as set forth in the proposed Exchange rules applicable to Tracking Fund Shares and the orders approving such rules.

Price information for the exchange-listed instruments held by the Funds, including both U.S. and non-U.S. listed equity securities and U.S. exchange-listed futures will be available

through major market data vendors or securities exchanges listing and trading such securities. Moreover, U.S.-listed equity securities held by the Funds will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.³¹ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. All futures contracts that the Funds may invest in will be traded on a U.S. futures exchange. The Exchange or the Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, underlying U.S. exchange-listed equity securities, and U.S. exchange-listed futures with other markets and other entities that are members of ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying equity securities, and U.S. exchange-listed futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference asset (as applicable), or the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Funds or Shares to comply with the continued listing requirements, and, pursuant to its obligations under

³¹ For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that not all components of the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to such Fund under Exchange Rule 14.12.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act³² in general and Section 6(b)(5) of the Act³³ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that proposed Rule 14.11(m) is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Tracking Fund Shares provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 14.11(m)(4)(A) provides the initial listing criteria for a series of Tracking Fund Shares, which include the following: (A) each series of Tracking Fund Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria: (i) for each series, the Exchange will establish a minimum number of Tracking Fund Shares required to be outstanding at the time of commencement of trading on the Exchange; (ii)

³² 15 U.S.C. 78f.

³³ 15 U.S.C. 78f(b)(5).

the Exchange will obtain a representation from the issuer of each series of Tracking Fund Shares that the NAV per share for the series will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: the NAV, the Tracking Basket, and the Fund Portfolio.

Proposed Rule 14.11(m)(4)(B) provides that each series of Tracking Fund Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria: (i) the Tracking Basket will be disseminated at least once daily and will be made available to all market participants at the same time; (ii) the Fund Portfolio will at a minimum be publicly disclosed within at least 60 days following the end of every fiscal quarter and will be made available to all market participants at the same time; (iii) upon termination of an Investment Company, the Exchange requires that Tracking Fund Shares issued in connection with such entity be removed from listing on the Exchange; and (iv) voting rights shall be as set forth in the applicable Investment Company prospectus or Statement of Additional Information.

Additionally, proposed Rule 14.11(m)(4)(B)(iii) provides that the Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Tracking Fund Shares pursuant to Rule 14.12 under any of the following circumstances: (a) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Tracking Fund Shares, there are fewer than 50 beneficial holders of the series of Tracking Fund Shares for 30 or more consecutive trading days; (b) if either the Tracking Basket or Fund Portfolio is not made available to all market participants at the same time; (c) if the Investment Company issuing the Tracking Fund Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to the

Investment Company with respect to the series of Tracking Fund Shares; (d) if any of the requirements set forth in this rule are not continuously maintained; (e) if any of the applicable Continued Listing Representations for the issue of Tracking Fund Shares are not continuously met; or (f) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Rule 14.11(m)(4)(B)(iv) provides that (a) the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Tracking Fund Shares inadvisable. These may include: (i) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Tracking Basket or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; and (b) if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: the net asset value, the Tracking Basket, or the Fund Portfolio with respect to a series of Tracking Fund Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Tracking Basket, or the Fund Portfolio is available to all market participants, as applicable.

While not providing daily disclosure of the Fund Portfolio could open the door to potential information leakage and misuse of material non-public information, the Exchange believes that proposed Rules 14.11(m)(2)(E) and (F) provide sufficient safeguards to prevent such leakage and misuse of information. The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Tracking Fund Shares because they provide meaningful requirements about both the

data that will be made publicly available about the Shares as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to information protection enumerated under proposed Rule 14.11(m)(2)(F) will act as a strong safeguard against any misuse and improper dissemination of information related to a Fund Portfolio, the Tracking Basket, or changes thereto. The requirement that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Tracking Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Tracking Basket or changes thereto will act to prevent any individual or entity from sharing such information externally. Additionally, the requirement that any such person or entity that is registered as a broker-dealer or affiliated with a broker-dealer will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Tracking Basket will act to make sure that no entity will be able to misuse the data for their own purposes. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Tracking Fund Shares because they provide meaningful requirements about both the data that will be made publicly available about the Shares (the Tracking Basket) as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to firewalls and information protection will act as a strong

safeguard against any misuse and improper dissemination of information related to the securities included in or changes made to the Fund Portfolio and/or the Tracking Basket. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

As noted above, the purpose of the structure of Tracking Fund Shares is to provide investors with the traditional benefits of ETFs while protecting funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of a fund. While each series of Tracking Fund Shares will be actively managed and, to that extent, similar to Managed Fund Shares (as defined in Rule 14.11(i)), Tracking Fund Shares differ from Managed Fund Shares in one key way.³⁴ A series of Tracking Fund Shares will disclose the Tracking Basket on a daily basis which, as described above, is designed to closely track the performance of the holdings of the Investment Company, instead of the actual holdings of the Investment Company, as provided by a series of Managed Fund Shares.³⁵

³⁴ The Exchange notes that there is one additional substantive difference between proposed Rule 14.11(m) and Rule 14.11(i): proposed Rule 14.11(m) would require a rule filing under Section 19(b) prior to listing any product on the Exchange meaning that no series of Tracking Fund Shares could be listed on the Exchange pursuant to Rule 19b-4(e) and there are no proposed rules comparable to the quantitative portfolio holdings standards from Rule 14.11(i).

³⁵ Proposed Rule 14.11(m)(4)(B)(ii) will, however, require each series of Tracking Fund Shares to at a minimum disclose the entirety of its portfolio holdings within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.

Form N-PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov.

For the arbitrage mechanism for any ETF to function effectively, Market Makers need sufficient information to accurately value shares of a fund to transact in both the primary and secondary market. The Tracking Basket is designed to closely track the daily performance of the holdings of a series of Tracking Fund Shares.

Given the correlation between the Tracking Basket and the Fund Portfolio,³⁶ the Exchange believes that the Tracking Basket would serve as a pricing signal to identify arbitrage opportunities when its value and the secondary market price of the shares of a series of Tracking Fund Shares diverge. If shares began trading at a discount to the Tracking Basket, an authorized participant could purchase the shares in secondary market transactions and, after accumulating enough shares to comprise a creation unit,³⁷ redeem them in exchange for a redemption basket reflecting the NAV per share of the fund's portfolio holdings. The purchases of shares would reduce the supply of shares in the market, and thus tend to drive up the shares' market price closer to the fund's NAV. Alternatively, if shares are trading at a premium, the transactions in the arbitrage process are reversed. Market Makers also can engage in arbitrage without using the creation or redemption processes. For example, if a fund is trading at a premium to the Tracking

³⁶ As provided in the Proxy Notices, funds and their respective advisers will take remedial actions as necessary if the funds do not function as anticipated. For the first three years after a launch, a fund will establish certain thresholds for its level of tracking error, premiums/discounts, and spreads, so that, upon the fund's crossing a threshold, the adviser will promptly call a meeting of the fund's board of directors and will present the board or committee with recommendations for appropriate remedial measures. The board would then consider the continuing viability of the fund, whether shareholders are being harmed, and what, if any, action would be appropriate. Specifically, the Proxy Applications and Proxy Notices provide that such a meeting would occur: (1) if the tracking error exceeds 1%; or (2) if, for 30 or more days in any quarter or 15 days in a row (a) the absolute difference between either the market closing price or bid/ask price, on one hand, and NAV, on the other, exceeds 2%, or (b) the bid/ask spread exceeds 2%.

³⁷ Tracking Fund Shares will be purchased or redeemed only in large aggregations, or "creation units," and the Tracking Basket will constitute the names and quantities of instruments for both purchases and redemptions of Creation Units.

Basket, Market Makers may sell shares short and take a long position in the Tracking Basket securities, wait for the trading prices to move toward parity, and then close out the positions in both the shares and the securities, to realize a profit from the relative movement of their trading prices. Similarly, a Market Maker could buy shares and take a short position in the Tracking Basket securities in an attempt to profit when shares are trading at a discount to the Tracking Basket.

Overall, the Exchange believes that the arbitrage process would operate similarly to the arbitrage process in place today for existing ETFs that use in-kind baskets for creations and redemptions that do not reflect the ETF's complete holdings but nonetheless produce performance that is highly correlated to the performance of the ETF's actual portfolio. The Exchange has observed highly efficient trading of ETFs that invest in markets where security values are not fully known at the time of ETF trading, and where a perfect hedge is not possible, such as international equity and fixed-income ETFs. While the ability to value and hedge many of these existing ETFs in the market may be limited, such ETFs have generally maintained an effective arbitrage mechanism and traded efficiently.

As provided in the Notice, the Commission believes that an arbitrage mechanism based largely on the combination of a daily disclosed Tracking Basket and at a minimum quarterly disclosure of the Fund Portfolio can work in an efficient manner to maintain a fund's secondary market prices close to its NAV.³⁸ Consistent with the Commission's view, the Exchange believes

³⁸ See Notice at 64144. The Commission also notes that as long as arbitrage continues to keep the Fund's secondary market price and NAV close, and does so efficiently so that spreads remain narrow, that investors would benefit from the opportunity to invest in active strategies through a vehicle that offers the traditional benefits of ETFs. See *Id.*, at 64145.

that the arbitrage mechanism for Tracking Fund Shares will be sufficient to keep secondary market prices in line with NAV.

The Exchange notes that a significant amount of information about each fund and its Fund Portfolio is publicly available at all times. Each series will disclose the Tracking Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis. Each series of Tracking Fund Shares will at a minimum publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Tracking Basket compared to the Fund Holdings for the prior business day and any information regarding the bid/ask spread for each Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Tracking Fund Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Tracking Fund Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange will require the issuer of each series of Tracking Fund Shares listed on the Exchange to represent to the Exchange that it will advise the

Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

As noted in proposed Rule 14.11(m)(2)(D), the Investment Company's investment adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily portfolio holdings of each series of Tracking Fund Shares. The Exchange believes that this is appropriate because it will provide the Exchange or FINRA, on behalf of the Exchange, with access to the daily Fund Portfolio of any series of Tracking Fund Shares upon request on an as needed basis. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Tracking Fund Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the shares.

As noted above, Form N-PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov. The Exchange also notes that the

Proxy Applications provide that an issuer will comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information, which otherwise do not apply to issuers of Tracking Fund Shares.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the CTA high-speed line. The Exchange deems Tracking Fund Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. As provided in proposed Rule 14.11(m)(2)(C), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01.

The Funds

Separately and in addition to the rationale supporting the arbitrage mechanism for Tracking Fund Shares more broadly above, the Exchange also believes that the particular instruments that may be included in each Fund's portfolio and Tracking Basket do not raise any concerns related to the Tracking Baskets being able to closely track the NAV of the Funds because such instruments include only instruments that trade on an exchange contemporaneously with the Shares. In addition, a Fund's Tracking Basket will be optimized so that it reliably and consistently correlates to the performance of the Fund. The Exchange and the Adviser agree with language in the Notice that specifically states that "in order to facilitate arbitrage, each Fund's portfolio and Tracking Basket will only include certain securities that trade on an exchange contemporaneously with the Fund's Shares. Because the securities would be exchange traded,

market participants would be able to accurately price and readily trade the securities in the Tracking Basket for purposes of assessing the intraday value of the Fund’s portfolio holdings and to hedge their positions in the Fund’s Shares.”³⁹

The Adviser anticipates that the returns between a Fund and its respective Tracking Basket will have a consistent relationship and that the deviation in the returns between a Fund and its Tracking Basket will be sufficiently small such that the Tracking Basket will provide Market Makers with a reliable hedging vehicle that they can use to effectuate low-risk arbitrage trades in Fund Shares. The Exchange believes that the disclosures provided by the Funds will allow Market Makers to understand the relationship between the performance of a Fund and its Tracking Basket. Market Makers will be able to estimate the value of and hedge positions in a Fund’s Shares, which the Exchange believes will facilitate the arbitrage process and help ensure that the Fund’s Shares normally will trade at market prices close to their NAV. The Exchange also believes that competitive market making, where traders are looking to take advantage of differences in bid-ask spread, will aid in keeping spreads tight.

The Exchange notes that a significant amount of information about each Fund and its Fund Portfolio is publicly available at all times. Each series will disclose the Tracking Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis.

³⁹ The Exchange notes that the instruments enumerated herein are consistent with the investable universe contemplated in the Notice. Specifically, the Notice provides that “Each Fund may invest only in ETFs, Exchange-traded notes, Exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares, Exchange-traded preferred stocks, Exchange-traded American depositary receipts, Exchange-traded real estate investment trusts, Exchange-traded commodity pools, Exchange-traded metals trusts, Exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents...All futures contracts that a Fund may invest in will be traded on a U.S. futures exchange. For these purposes, an “Exchange” is a national securities exchange as defined in section 2(a)(26) of the [1940] Act.” See Notice at 64143.

Intraday pricing information for all constituents of the Tracking Basket that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services. Each series of Tracking Fund Shares will at a minimum publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Tracking Basket compared to the Fund Holdings for the prior business day and any information regarding the bid/ask spread for each Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended.

The Exchange represents that the Shares of the Funds will continue to comply with all other proposed requirements applicable to Tracking Fund Shares, which also generally correspond to the requirements for Managed Fund Shares, including the dissemination of key information such as the Tracking Basket, the Fund Portfolio, and NAV, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, an information circular informing members of the special characteristics and risks associated with trading in the series of Tracking Fund Shares, and firewalls as set forth in the proposed Exchange

rules applicable to Tracking Fund Shares and the orders approving such rules. Moreover, U.S.-listed equity securities held by the Funds will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.⁴⁰ All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference asset (as applicable), or the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund or Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to such Fund under Exchange Rule 14.12.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. Rather, the Exchange notes that the proposed rule change will facilitate the listing of a new type of

⁴⁰ For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that not all components of the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

actively-managed exchange-traded product, thus enhancing competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 5, is consistent with the Act and rules and regulations thereunder applicable to a national securities exchange.⁴¹ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 5, is consistent with Section 6(b)(5) of the Act,⁴² which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

A. Proposed BZX Rule 14.11(m)

Pursuant to the Exemptive Order,⁴³ Tracking Fund Shares would not be required to disclose the actual holdings of the Investment Company on a daily basis. Instead, Tracking Fund Shares would be required to publicly disclose the Tracking Basket, which is designed to closely track the performance of the holdings of the Investment Company, on a daily basis. Like other

⁴¹ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁴² 15 U.S.C. 78f(b)(5).

⁴³ See supra note 13.

registered management investment companies, Tracking Fund Shares would be required to disclose the actual holdings of the Investment Company within at least 60 days following the end of every fiscal quarter. For reasons described below, the Commission believes that BZX Rule 14.11(m) is sufficiently designed to be consistent with the Act and to help prevent fraudulent and manipulative acts and practices and to maintain a fair and orderly market for Tracking Fund Shares.

The Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the listing and trading of Tracking Fund Shares on the Exchange. The Commission notes that the proposed listing and trading rules for Tracking Fund Shares, where appropriate, are similar to existing Exchange rules relating to exchange-traded funds, in particular, Managed Portfolio Shares.⁴⁴ Prior to listing and/or trading on the Exchange, the Exchange must file a separate proposed rule change pursuant to Section 19(b) of the Act for each series of Tracking Fund Shares.⁴⁵ All such shares listed and/or traded under proposed BZX Rule 14.11(m) will be subject to the full panoply of BZX rules and procedures that currently govern the trading of equity securities on the Exchange.

For the initial listing of each series of Tracking Fund Shares under proposed BZX Rule 14.11(m), the Exchange must establish a minimum number of Tracking Fund Shares required to be outstanding at the commencement of trading. In addition, the Exchange must obtain a representation from the issuer of Tracking Fund Shares that the NAV per share will be calculated

⁴⁴ The proposed rules relating to limitation of liability (proposed BZX Rule 14.11(m)(5)), termination (proposed BZX Rule 14.11(m)(4)(B)(iv)), and voting (proposed BZX Rule 14.11(m)(4)(B)(v)) are substantively similar or identical to existing provisions for Managed Fund Shares and Managed Portfolio Shares. See BZX Rule 14.11(i)(5) and BZX Rule 14.11(k)(5), BZX Rule 14.11(i)(4)(B)(v) and BZX Rule 14.11(k)(4)(B)(v), and BZX Rule 14.11(i)(4)(B)(vi) and BZX Rule 14.11(k)(4)(B)(vi), respectively.

⁴⁵ See proposed BZX Rule 14.11(m)(2)(A).

daily and that the NAV, Tracking Basket, and Fund Portfolio will be made available to all market participants at the same time. Moreover, all Tracking Fund Shares must have a stated investment objective, which must be adhered to under Normal Market Conditions.

Although the actual portfolio holdings of the Tracking Fund Shares are not publicly disclosed on a daily basis, the Commission believes that the proposed listing standards under proposed BZX Rule 14.11(m), along with the Tracking Basket, are adequate to ensure transparency of key information regarding the Tracking Fund Shares and that such information is made available to market participants at the same time. Namely, the Tracking Basket would be disseminated at least once daily and would be made available to all market participants at the same time.⁴⁶ In addition, like all other registered management investment companies, each series of Tracking Fund Shares would be required to publicly disclose its portfolio holdings information on a quarterly basis, within at least 60 days following the end of every fiscal quarter.⁴⁷ If the Exchange becomes aware that the NAV, the Tracking Basket, or the Fund Portfolio is not being made available to all market participants at the same time, then the Exchange will halt trading in such series until such times as the NAV, Tracking Basket, or Fund Portfolio is available to all market participants, as applicable.⁴⁸ Further, if either the Tracking Basket or Fund Portfolio is not made available to all market participants at the same time, the Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Tracking Fund Shares. Moreover, the Exchange represents that a series of Tracking Fund Shares' Statement of Additional Information and shareholder reports will be available for

⁴⁶ See proposed BZX Rule 14.11(m)(4)(B)(i).

⁴⁷ See proposed BZX Rule 14.11(m)(3)(A). See also Rules 30e-1, 30d-1, and 30b1-5 under the 1940 Act.

⁴⁸ See proposed BZX Rule 14.11(m)(4)(B)(iv)(b).

free upon request from the Investment Company, and that those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov.

The Commission also finds that the Exchange's rules with respect to trading halts and suspensions under proposed BZX Rule 14.11(m) are designed to help maintain a fair and orderly market. According to the proposal, the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Further, trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Tracking Fund Shares inadvisable. These may include the extent to which trading is not occurring in the securities and/or the financial instruments comprising the Tracking Basket or the Fund Portfolio, or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.⁴⁹

Other provisions of the Exchange's rule pertaining to suspension are substantially consistent with provisions that currently exist for Managed Fund Shares and Managed Portfolio Shares. Those provisions state that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under BZX Rule 14.12 for, a series of Tracking Fund Shares if: (1) following the initial twelve-month period after commencement of trading on the Exchange of a series of Tracking Fund Shares, there are fewer than 50 beneficial holders of the series of the Tracking Fund Shares for 30 or more consecutive trading days;⁵⁰ (2) the Investment Company issuing the Tracking Fund Shares has failed to file any required filings with the Commission, or if the Exchange becomes aware that the Investment Company is not in

⁴⁹ See proposed BZX Rule 14.11(m)(4)(B)(iv)(a).

⁵⁰ See proposed BZX Rule 14.11(m)(4)(B)(iii)(a).

compliance with the conditions of any exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Tracking Fund Shares;⁵¹ (3) any of the listing requirements set forth in BZX Rule 14.11(m) are not continuously maintained;⁵² (4) any of the applicable Continued Listing Representations⁵³ for the issue of Tracking Fund Shares are not continuously met;⁵⁴ or (5) such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings of the Tracking Fund Shares on the Exchange inadvisable.⁵⁵

Finally, the Commission believes that the requirements of proposed BZX Rule 14.11(m) are consistent with the Act and, more specifically, are reasonably designed to help prevent fraudulent and manipulative acts and practices. The Commission notes that, because Tracking Fund Shares would not publicly disclose on a daily basis information about the actual holdings of the Fund Portfolio, it is vital that such information be kept confidential and not be subject to misuse. Accordingly, to help ensure that the portfolio information be kept confidential and the shares not be susceptible to fraud or manipulation, proposed BZX Rule 14.11(m)(2)(E) requires that, if the investment adviser to the Investment Company issuing Tracking Fund Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser must

⁵¹ See proposed BZX Rule 14.11(m)(4)(B)(iii)(c).

⁵² See proposed BZX Rule 14.11(m)(4)(B)(iii)(d).

⁵³ BZX Rule 14.11(a) defines “Continued Listing Representations” as any of the statements or representations regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, intraday indicative values, and VIIV (as applicable), or the applicability of Exchange listing rules specified in any filing to list a series of Other Securities (as defined in BZX Rule 14.11(a)).

⁵⁴ See proposed BZX Rule 14.11(m)(3)(B)(iii)(e).

⁵⁵ See proposed BZX Rule 14.11(m)(3)(B)(iii)(f).

erect and maintain a “fire wall” between such investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio and/or the Tracking Basket. Further, the Rule also requires that any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s Fund Portfolio and/or the Tracking Basket or has access to nonpublic information regarding the Fund Portfolio and/or the Tracking Basket or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio and/or the Tracking Basket or changes thereto. In addition, proposed BZX Rule 14.11(m)(2)(F) provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Tracking Basket or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Tracking Basket or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity must erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Tracking Basket. The proposed rules also require that the Exchange implement and maintain surveillance procedures. Finally, to ensure that the Exchange has the appropriate information to monitor and surveil its market, BZX Rule 14.11(m) requires that the Investment Company’s investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Fund Portfolio of each series of Tracking Fund Shares.⁵⁶

⁵⁶ See proposed BZX Rule 14.11(m)(2)(D).

For the reasons discussed above, the Commission finds that proposed BZX Rule 14.11(m) for Tracking Fund Shares is consistent with Section 6(b)(5) of the Act.

B. Listing and Trading of Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF

The Commission believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading in the Shares when a reasonable degree of certain pricing transparency cannot be assured. As such, the Commission believes the proposal is reasonably designed to maintain a fair and orderly market for trading the Shares. The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act, which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

Specifically, the Commission notes that the Exchange has obtained a representation from the issuer that the NAV per Share of each Fund will be calculated daily and that the NAV, Tracking Basket, and Fund Portfolio will be made available to all market participants at the same time.⁵⁷ Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association high-speed line. Moreover, the Funds' website will include additional information updated on a daily basis, including, on a per Share basis for each Fund, the prior business day's NAV, the closing price or bid/ask price at the time of calculation of such

⁵⁷ See BZX Rule 14.11(m)(4)(A)(ii).

NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Tracking Basket compared to the Fund holdings for the prior business day, and any information regarding the bid/ask spread for each Fund as may be required. The website and information will be publicly available at no charge.

In addition, the Exchange states that intraday pricing information for all constituents of the Tracking Basket that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services, and that intraday pricing information for cash equivalents will be available through subscription services and/or pricing services.

The Commission also believes that the proposal is reasonably designed to help prevent fraudulent and manipulative acts and practices. Specifically, the Exchange provides that:

- The Adviser is not registered as a broker-dealer but is affiliated with numerous broker-dealers and has implemented and will maintain a “fire wall” between the respective personnel at the Adviser and affiliated broker-dealers with respect to access to information concerning the composition and/or changes to each Fund’s portfolio and Tracking Basket;
- Personnel who make decisions on a Fund’s portfolio composition and/or Tracking Basket or who have access to nonpublic information regarding the Fund Portfolio and/or the Tracking Basket or changes thereto are subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio and/or Tracking Basket;

- The Funds' Sub-Advisers are not registered as a broker-dealer but are affiliated with numerous broker-dealers, and Sub-Adviser personnel who make decisions regarding a Fund's Fund Portfolio and/or Tracking Basket or who have access to information regarding the Fund Portfolio and/or the Tracking Basket or changes thereto are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio and/or Tracking Basket;
- In the event that (a) the Adviser or a Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes newly affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the Fund Portfolio and/or Tracking Basket, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio and/or Tracking Basket; and
- Any person or entity, including any service provider for the Funds, who has access to nonpublic information regarding a Fund Portfolio or Tracking Basket or changes thereto for a Fund or Funds will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or Tracking Basket or changes thereto, and any such person or entity that is registered as a broker-dealer or affiliated with a broker-dealer has erected and will maintain a "fire wall" between the person or entity and

the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Tracking Basket.

Finally, the Exchange represents that trading of the Shares on the Exchange will be subject to the Exchange's surveillance procedures for derivative products,⁵⁸ and that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Moreover, the Exchange will inform its members in an information circular of the special characteristics and risks associated with trading the Shares.

In support of this proposal, the Exchange represents that:

- (1) The Shares will conform to the initial and continued listing criteria under BZX Rule 14.11(m).
- (2) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.
- (3) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed with and may obtain trading information regarding trading in the Shares and the underlying exchange-traded instruments from other markets and other entities that are members of ISG or with which the Exchange has in place a

⁵⁸ See BZX Rule 14.11(m)(2)(D), which requires, as part of the surveillance procedures for Tracking Fund Shares, the Funds' investment adviser to, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Tracking Fund Shares.

comprehensive surveillance sharing agreement. Any foreign common stocks held by the Fund will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

- (4) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions in which the Shares trade.
- (5) For initial and continued listing, each Fund will be in compliance with Rule 10A-3 under the Act.⁵⁹
- (6) Each Fund's holdings will conform to the permissible investments as set forth in the Application and Order, and the holdings will be consistent with all requirements set forth in the Application and Order. Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

The Exchange represents that all statements and representations made in the filing regarding: (1) the description of the portfolio or reference assets; (2) limitations on portfolio holdings or reference assets; (3) dissemination and availability of reference asset; and (4) the applicability of Exchange rules constitute continued listing requirements for listing the Shares on the Exchange. In addition, the Exchange represents that the issuer will advise the Exchange of any failure by a Fund to comply with the continued listing requirements and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under BZX Rule 14.12.

⁵⁹ See 17 CFR 240.10A-3.

IV. Solicitation of Comments on Amendment No. 5 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether the proposed rule change, as modified by Amendment No. 5, is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2019-107 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBZX-2019-107. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments

are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2019-107, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 5

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 5, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 5 in the Federal Register. In Amendment No. 5, the Exchange (a) revised the description of circumstances under which the Exchange will consider halting trading in a series of Tracking Fund Shares; (b) revised the description of information that shall be disclosed on the website for each series of Tracking Fund Shares; (c) removed the description of required prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940; (d) removed the description of the information circular provided by the Exchange; (e) represented that any foreign common stock will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement; (f) described the sources of pricing information for components of the Tracking Basket; (g) represented that the website of each series of Tracking Fund Share would disclose the percentage weight overlap between the holdings of the Tracking Basket compared to a Fund's holdings for the prior business day; (h) noted that an issuer will comply with Regulation Fair Disclosure; and (i) represented that any person or entity, including any service provider for the Funds, who has access to nonpublic information regarding a Fund Portfolio or Tracking Basket or changes thereto for a Fund or Funds would be subject to procedures designed to prevent the use and dissemination of material nonpublic information, and that any such person or entity that is registered as a broker-dealer or affiliated with a broker dealer has erected and will maintain a

“fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Tracking Basket. Amendment No. 5 also provides other clarifications and additional information to the proposed rule change.⁶⁰ The changes and additional information in Amendment No. 5 assist the Commission in finding that the proposal is consistent with the Exchange Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,⁶¹ to approve the proposed rule change, as modified by Amendment No. 5, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act⁶² that the proposed rule change (SR-CboeBZX-2019-107), as modified by Amendment No. 5, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶³

J. Matthew DeLesDernier,
Assistant Secretary.

⁶⁰ See Amendment No. 4, supra note 11.

⁶¹ 15 U.S.C. 78s(b)(2).

⁶² Id.

⁶³ 17 CFR 200.30-3(a)(12).

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